

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GETTY OIL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0573

Decision No. CU 815

Counsel for claimant:

Tumulty & Tumulty
by Joseph P. Tumulty, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was originally presented by Tidewater Oil Company in the amount of \$10,284.86 based upon the asserted loss of payment for merchandise shipped to Cuba. The Tidewater Oil Company merged with and into the GETTY OIL COMPANY on September 30, 1967 and the GETTY OIL COMPANY is substituted as claimant herein.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record contains a copy of the Certificate of Incorporation of the Tidewater Oil Company which establishes that the corporation was organized in the State of Delaware in 1926 and an officer of that corporation has certified that at all times between the dates of loss and presentation of this claim on November 23, 1965, more than 50% of the outstanding capital stock of the Tidewater Oil Company has been owned by United States nationals. The Commission holds that Tidewater Oil Company was a national of the United States within the meaning of Section 502(1)(B) of the Act at all times pertinent herein,

The officer of the Tidewater Oil Company further states that more than 99% of its stockholders were residents of the United States and assumed to be United States citizens.

The record contains copies of the Tidewater Oil Company's invoices, as below, which reflect the sale of goods to Aspuru y Cia., S. A., of Havana, Cuba, in the amount of \$10,284.86. Payment in all but three of these transactions was to be made by bank draft. For each draft transaction, the record further contains a copy of a notice to the drawer by its bank, the Bank of Nova Scotia, informing the drawer that the draft in question had been collected, and that payment would be effected upon

receipt of dollar exchange permission from the Cuban authorities. The three transactions for which no drafts were drawn were due in 120 days. An officer of the Tidewater Oil Company states that the funds have never been received.

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Draft or Invoice Amt.</u>	<u>Draft Collected</u>	<u>Date Due or Collection Advice</u>
67	10/28/59	\$ 84.25	OA	1/26/60
68	10/28/59	53.40	OA	1/26/60
48	1/18/60	5.23	OA	4/17/60
56	11/16/59	2,139.15)		
57	11/16/59	668.95)	\$ 2,808.10	3/11/60
74	10/26/59	3,129.30	3,129.30	2/26/60
40/41	6/23/60	2,895.89	2,895.89	10/12/60
122	6/27/60	616.14	616.14	7/22/60
60	3/22/60	692.55	692.55	8/31/60

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on January 26, 1960 as to \$137.65 and on August 17, 1960 as to \$5.23, in each case 120 days after the date of the invoice; on February 27, 1960 as to \$3,129.30, on March 12, 1960 as to \$2,808.10, on July 23, 1960 as to \$616.14, on September 1, 1960 as to \$692.55, and on October 13, 1960 as to \$2,895.89, in each case the day after the notice of collection was sent by the correspondent Cuban bank.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provision is made for the settlement thereof.

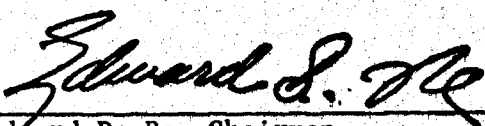
CERTIFICATION OF LOSS

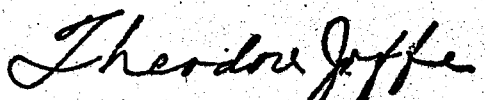
The Commission certifies that GETTY OIL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of

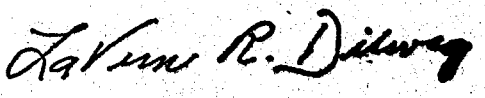
Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ten Thousand Two Hundred Eighty-Four Dollars and Eighty-Six Cents (\$10,284.86) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

14 DEC 1967

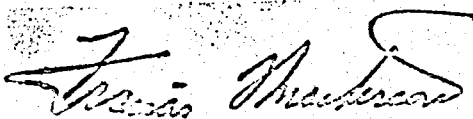

Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

Unclassified

This is a true and correct copy of the decision
of the Commission which was entered as the Final
decision on 12-18-67


Francis M. Thompson
Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-0573